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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059944
Party	Defendant Peoples Club of Nigeria International
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST, SUITE 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
Submission	Brief on Merits for Defendant
Filer's Name	Matthew Swyers
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

U.S. Registration No. 4,591,874,
For the mark PEOPLES CLUB OF NIGERIA INTERNATIONAL,
Registered on the Official Registry August 26, 2014.

Peoples Club of Nigeria International Princeton- :
Junction, NJ Branch, Inc.; Peoples Club of Nigeria- :
International-Miami Branch; and Peoples Club of- :
Nigeria International-Chicago Branch, :

Petitioners, :

Cancellation No. 92059944

vs. :

Peoples Club of Nigeria International, :

Registrant. :

**TRIAL BRIEF OF REGISTRANT
PEOPLES CLUB OF NIGERIA INTERNATIONAL**

The Trademark Company, PLLC
344 Maple Avenue West, PMB 151
Vienna, VA 22180
Telephone (800) 906-8626
Facsimile (270) 477-4574
Counsel for Registrant

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I. INTRODUCTION

Petitioners Peoples Club of Nigeria International Princeton-Junction, NJ Branch, Inc. and Peoples Club of-Nigeria International-Chicago Branch, (hereinafter “Petitioners”) petitioned to cancel U.S. Registration No. 4,591,874 owned by Peoples Club of Nigeria International (hereinafter “Registrant”).

As can more fully be seen in Petitioners’ pleadings, at the heart of the matter are two grounds for cancellation: (1) whether the Petitioners retain priority of use over Registrant for the disputed service mark; and (2) whether Registrant committed fraud upon the U.S. Patent and Trademark Office in securing U.S. Reg. No. 4,591,874. However, looking past these basic trademark allegations the true nature of this matter is complicated by what is, effectively, a struggle for control over the ownership of the Registrant and not, in fact, the Registrant’s ownership of the service mark at issue.

In the end, as will be more fully set forth below, it is respectfully submitted that the Petitioners have failed in their burden of proof to establish the requisite elements of their claims and, moreover, this matter should more appropriately be addressed in another forum that can decide upon ownership and control of the Registrant entity as opposed to the Registrant’s ownership of the service mark at issue.

II. RECORD BEFORE THE BOARD

Depositions

Deposition Testimony of Dr. Ambrose Mgbako for the Registrant dated December 2, 2015

Deposition Testimony of Gordian Ndubizu for the Petitioners dated December 8, 2015

Deposition Testimony of Dr. Anayo Ukeje for the Petitioner dated December 11, 2015

Notices of Reliance

Petitioners' Notice of Reliance and Exhibits Thereto dated December 21, 2015¹

Petitioners' Supplemental Notice of Reliance and Exhibits Thereto dated January 20, 2016

Petitioners' Second Supplemental Notice of Reliance and Exhibits Thereto dated June 1, 2016

Trademark Registrations & Application Files

U.S. Registration No. 4,591,874

III. OBJECTIONS TO EVIDENCE

A. Petitioners' Supplemental and Second Supplemental Notice(s) of Reliance Are Untimely

A party may take testimony only during its assigned testimony period, except by stipulation of the parties approved by the Board, or, on motion, by order of the Board. TBMP § 703.01(c). Certain types of evidence, such as official records and printed publications as described in 37 CFR § 2.122(e), need not be introduced in connection with the testimony of a witness but may instead be made of record by filing the materials with the Board under cover of one or more notices of reliance *during the testimony period of the offering party*. TBMP § 704.02 (*emphasis added*).

By way of history, the Order of the Board dated October 14, 2015 reset trial dates in the matter such that Petitioners' trial period ran from November 21, 2015 through December 21, 2015. *See Order* dated October 14, 2015. As is clear from the record, Petitioners filed Petitioners' Supplemental Notice of Reliance on January 20, 2016 and, thereafter, Petitioners' Second Supplemental Notice of Reliance on June 1, 2016. The record is wholly devoid of any motion or

¹ The records indicate a dual filing date of December 21, 2015 as well as December 24, 2015. However, as the document was certified by counsel as of December 21, 2015 no objection on the grounds of timeliness will be lodged as to this pleading.

other pleading filed by Petitioners to have their second and third notices of reliance accepted beyond the Petitioners' recognized trial period.

Accordingly, it is submitted that Petitioners' Supplemental Notice of Reliance filed on January 20, 2016 and Petitioners' Second Supplemental Notice of Reliance filed just recently on June 1, 2016 were taken outside of the Petitioner's trial period as required under TBMP § 703.01(c). As such, and as Registrant has not consented to the filing of this evidence outside of Petitioners' trial period and would be prejudiced by the same by its inability to submit counter-evidence or cross examine witnesses regarding the same, it is respectfully requested that the Board strike both supplemental notices of reliance filed by Petitioners from the record of this matter and any references thereto in the brief of the Petitioners.

B. Exhibits P-10, P-19, P-20, P-21, and P-23 of Dr. Mgbako's Deposition Should be Stricken from the Record for Lack of Authenticity

During the deposition testimony of Dr. Ambrose Mgbako Registrant dated December 2, 2015 Petitioners, by counsel, sought to question and introduce Exhibits P-10, P-19, P-20, P-21, as well as P-23. *See* Deposition Testimony of Dr. Ambrose Mgbako for the Registrant dated December 2, 2015 (hereinafter "Mgbako Depo.") at pp. 46-48, 53, 60-61, 75-77. Dr. Mgbako testified that he had never seen these documents prior to the deposition and thus they lack the proper foundation and authenticity to be admitted in the instant matter per the Federal Rules of Evidence. *See* Fed. R. Evid. 901.

As such, it is respectfully requested that the Board strike Exhibits P-10, P-19, P-20, P-21, and P23 from the record of Dr. Mgbako's testimony as well as all testimony relating thereto.

IV. STATEMENT OF THE FACTS

Registrant is the owner of U.S. Registration No. 4,591,874 for the mark PEOPLES CLUB OF NIGERIA INTERNATIONAL and Design (hereinafter “Registrant’s Mark”) for use in connection with “Social club services, namely, arranging, organizing, and hosting social events, get-togethers, and parties for club members” covered in Class 41 (hereinafter “Registrant’s Services”). This registration maintains a priority date in 1994. *See* U.S. Registration No. 4,591,874. The service mark appears as follows:

PEOPLES CLUB OF NIGERIA INTERNATIONAL



By way of history, the Peoples Club of Nigeria was created in Nigeria in 1971 (hereinafter “PCNI – Nigeria”). Mgbako Depo. at. P. 22. It is a social organization founded for networking purposes that is also rooted in providing charity work to the communities which are served by the organization. *Id.* at p. 79-80. *See also* Exhibit 1.² Like a typical social club, it has a constitution that sets forth how its member branches are required to operate. *Id.* Each branch is given a license by the executive leadership of PCNI – Nigeria to be inaugurated and become a branch after fulfilling certain requirements. *Id.* When a branch is incorporated and inaugurated it becomes affiliated with the club and, thus, operates under the constitution of the club. *Id.* The executive leadership of each branch then reports to the president of PCNI – Nigeria. *Id.* at p. 23. As of December 2015, Dr. Joseph Ilonze was the President of PCNI – Nigeria. *Id.* at p. 24.

² Petitioners’ exhibits during the deposition of Dr. Mgbako were designated by exhibit stickers bearing “Plaintiff’s Exhibit P-” whereas Registrant’s exhibits were designated by exhibit stickers bearing “Exhibit _”.

The president of PCNI – Nigeria, the chairmen of all branches, patrons and trustees form the Central Executive Committee where decisions are made concerning the affairs of the entire organization both nationally and internationally. Mgbako Depo. at. P. 24, 82. *See also Deposition of Gordian Ndubizu* dated December 8, 2015 (hereinafter “Ndubizu Depo.”) at pp. 14, 74. An annual general meeting occurs to make decisions that affect the club as a whole. *Id.* at p. 25. *See also Deposition of Dr. Anayo Ukeje* dated December 11, 2015 (hereinafter “Ukeje Depo.”) at p. 11-12.

Forming a branch of the PCNI – Nigeria and receiving a charter entails a very specific process effectively awarded by the Central Executive Committee for the entire organization. *Id.* at pp. 49-51. The license to operate a branch only remains active for as long as the branch meets the conditions to remain a member. *Id.* at p. 51. Likewise, a branch may be dissolved and/or its charter revoked if it ceases to operate or if a decision to dissolve the branch is made at the annual general meeting. *Id.* at pp. 57-58. As a function of the dissolution of the branch, consistent with the terms of operation of club a dissolved branch is “no longer a branch” and should no longer “call yourself a member of Peoples Club.” *Id.* at p. 59. Likewise, they must cease using the service mark of the Peoples Club of Nigeria. *Id.* at p. 95.

The first branch of The Peoples Club of Nigeria in the U.S. was inaugurated in Houston on May 26, 1990. Mgbako Depo. at. p. 21. *See also Ukeje Depo.* at pp. 13-14. Between 1990 and 2013 the number of branches grew to 44 when, in December of 2013, three of the branches were removed or dissolved. *Id.* at p. 22.

Concerning the Registrant, Dr. Ambrose Mgbako (hereinafter “Dr. Mgbako”) is a national patron of the Registrant. In 2010 Dr. Mgbako incorporated the Registrant in New Jersey. Mgbako Depo. at. pp. 19, 30-32. In this regard, he was vested with the responsibilities of registering the

company, being a signatory to its bank account, receipt of dues paid by member branches, as well as being empowered to register and monitor use of the trademark at issue. *Id.*

Dr. Mgbako was given the authority to organize the Registrant by the Central Executive Committee of the club during the annual meeting in Houston, Texas in August of 2010. *Id.* at pp. 32-33, 83. *See also id.* at Exhibit P-17. At that time he was also vested with the authority to file for the service mark at issue on behalf of the Registrant. *Id.* at pp. 32-33, 83. *See also id.* at Exhibit P-17. The leadership included delegates from PCNI - Nigeria including, but not limited to, Dr. Joseph Ilonze who, as stated above, was the President of PCNI – Nigeria. *Id.* at pp. 34-35, 85-86. This authority was reaffirmed for the Registrant via a letter written by Dr. Joseph Ilonze on October 25, 2014. *Id.* at pp. 85-87, Exhibit 4. The letter further confirmed that the Registrant is a subsidiary of PCNI – Nigeria. *Id.* at p. 87, Exhibit 4. *See also id.* at p. 88, Exhibit 5. The purpose of the Registrant was to be a subsidiary of PCNI – Nigeria holding all U.S. rights to the service mark at issue. *Id.* at p. 96. The date of first use claimed in the service mark application thus flows from the Houston Chapter of PCNI – Nigeria which first used the trademark at issue in the United States. *Id.* at p. 96.

Pursuant to that authority, Registrant filed the underlying application for Registrant's Mark on November 12, 2013. Registrant's underlying application for Registrants Mark was assigned U.S. Serial No. 86/116,372. This application ultimately matured into the service mark registration at issue.

More specifically, Dr. Mgbako, acting with the authority of the executive leadership of the club, in 2010 hired the law firm Klauber & Jackson to assist the Registrant to register the service mark at issue. Mgbako Depo. at pp. 37-38. *See also id.* at pp. 66-67, 94-95. Based upon the testimony, it appears that Klauber & Jackson filed an original application for the service mark, told

Dr. Mgbako that registration of the same would take a few years, and then when Dr. Mgbako checked back in 2013 on the status he discovered that no registration had issued because an office action was not responded to. *See id.* at pp. 38-39. Thereafter, as he already had the authority from the Central Executive Committee to register the service mark, Dr. Mgbako retained the undersigned to prosecute a new application for the instant service mark from which the instant registration was issued. *Id.* at p. 67.

Petitioners called two witnesses in this matter: Dr. Anayo Ukeje and Mr. Gordian Ndubizu. Dr. Ukeje is the founding chairman of Petitioner Peoples Club of Nigeria – Chicago branch with PCNI – Nigeria. Ukeje Depo. at p. 9. Dr. Ukeje was specifically called to testify on behalf of PCNI – Chicago. Of note, PCNI – Chicago was not organized as a chapter until January of 2006 and did not start using the service mark at issue until that time. *Id.* at p. 10, 14.

In turn, Gordian Ndubizu³ is the founding chairman of Petitioner Peoples Club of Nigeria Princeton Juncture branch. Ndubizu Depo. at pp. 11-12. Of note, curiously he was not called as a witness on behalf of PCNI – Princeton Junction. Rather, he was just purportedly just called as a general fact witness with general knowledge concerning that branch. Notwithstanding this fact, Princeton Junction was not organized as a chapter of PCNI – Nigeria until 1998. *Id.* As such, Petitioner PCNI – Princeton Junction did not commence use of the service mark at issue until 1996 or 1997. Ndubizu Depo. at pp. 23-24, 79-82.

Of not, Mr. Ndubizu was not at the meeting in Houston in August of 2010 nor was Dr. Ukeje. Mgbako Depo. at pp. 84-85. However, Petitioner PCNI – Chicago, through its authorized

³ Mr. Ndubizu also contends to be the Registered Agent for the Registrant. In a bizarre and somewhat obstructive cross-examination while asserting this claim Mr. Ndubizu conceded that as the alleged “registered agent” for the Registrant he would never take action detrimental to the Registrant (e.g., attempting to cancel its registered service mark) but then when asked why he was assisting cancellation efforts against the Registrant for which he is allegedly the “registered agent” he responded because it is for the good of the entire social organization. Ndubizu Depo. at pp. 83-88.

representative Dr. Ukeje, admitted on cross-examination that Dr. Mgbako of the Registrant was empowered to both form the Registrant in the State of New Jersey as well as to apply to register the service mark at issue. Ukeje Depo. at p. 48. Specifically, Dr. Ukeje testified:

Q: So in 2010 – and everyone can agree, I believe, based upon your testimony, that Dr. Mgbako was to file for the Trademark application or was to – was given the authority to register the Trademark, correct?

A: Register the Inc. [Registrant], and file the trademark for all participating affiliates.

...

Q: ... but I think what we can agree ... is that PCNI, Inc. [Registrant], as a subsidiary, ... was given the authority to file for and register the Trademark, and of course, the contingent at issue in Nigeria or otherwise is who really owns PCNI, Inc.?

A: Exactly...

Id. at pp. 48-49 (*emphasis added*). Mr. Ndubizu further conceded that Dr. Mgbako was authorized to form the Registrant and file for the trademark. Ndubizu Depo. at pp. 89-93 (*emphasis added*).

In short, all three witnesses in this case, Dr. Mgbako for the Registrant, and Dr. Ukeje and Mr. Ndubizu for the Petitioners, agree that Dr. Mgbako was granted the authority by the Central Executive Committee to form the Registrant and, in turn, use the Registrant to file for the service mark at issue (*emphasis added*).

The service mark at issue has been in continuous use in the United States since May 26, 1990. Mgbako Depo. at p. 65. It has been used by all of the recognized branched of the Peoples Club of Nigeria in the United States since that time. *Id.* Petitioners' were allowed the right to use the service mark until "they were delisted". *Id.* It was created and in use by PCNI – Nigeria long before the creation of the Petitioner branches. *Id.* at p. 90. None of the Petitioner branches had any hand in creating the service mark at issue. *Id.* It was created and owned by PCNI – Nigeria

and then permitted to be used by its authorized branches in the U.S. with the first branch being Houston. *Id.* at pp. 90-91.

Of note, there is a dispute as to the control of PCNI – Nigeria. The dispute appeared to have started in 2012 surrounding a split concerning the original entity in Nigeria, PCNI – Nigeria. Ukeje Depo. at p. 18, 47. Dr. Mgbako testified that Dr. Joseph Ilonze remains the president of the PCNI – Nigeria and has been in that capacity since 2012 or 2013. Mgbako Depo. at pp. 43-44; Exhibit P-6. He further testified that Sam Iwuchukwu “is not the president of Peoples Club of Nigeria, he is an expelled member.” *Id.* at pp. 42-43. Mr. Nubizu was the chairman of one of the Petitioners, Peoples Club of Nigeria – Princeton Junction Branch, but as of Dr. Mgbako’s deposition he has been expelled from the club. *Id.* at p. 74. Moreover, documents bearing expelled members names to appear as actual leadership of the club have been fabricated. *Id.* at pp. 45-46; Exhibit P-7.

To this end, as part of this dispute the Petitioner branches were expelled from the Peoples club of Nigeria because they were not operating in a manner consistent with how they were to be operating. Mgbako Depo. at pp. 91-92. Specifically, there was a lawsuit against PCNI – Nigeria filed in Nigeria by Dr. Ndubizu. *Id.* at p. 92. As a result, all of the branches had to take specific action to remain affiliated with the club. *Id.* the Petitioner branches did not. *Id.* Accordingly, they were expelled and the branches dissolved at the general meeting in December of 2013. *Id.*

However, and again, this dispute notwithstanding nothing regarding the dispute affects the fact that all three testimonial witnesses agree that Dr. Mgbako had the right to form the Registrant and file for the service mark at issue for the entire organization (*emphasis added*).

V. ARGUMENT

A. Burden of Proof

The burden of proof in the instant matter is upon the Petitioners to establish, by a preponderance of the evidence, the claims in the instant matter. *West Florida Seafood vs. Jet Restaurants*, 31 F.3d 1122, 1125, 31 USPQ2d 1660, 1662 (Fed. Cir. 1994). In the instant case, Petitioners simply cannot meet this burden for either of their allegations which form the basis for this cancellation action.

B. Petitioners Have Failed to Establish Priority of Use

To establish the first basis for the instant cancellation proceeding the Petitioners must establish that they used the service mark at issue in interstate commerce prior to the use established by the Registrant. The facts of this case simply do not support this claim.

The first branch of The Peoples Club of Nigeria in the U.S. was inaugurated in Houston on May 26, 1990. Mgbako Depo. at p. 21. Dr. Mgbako was given the authority to organize the Registrant by the Central Executive Committee of the club during the annual meeting in Houston, Texas in August of 2010. *Id.* at pp. 32-33, 83. *See also id.* at Exhibit P-17. At that time he was also vested with the authority to file for the service mark at issue on behalf of the Registrant. *Id.* at pp. 32-33, 83. *See also id.* at Exhibit P-17. The leadership included delegates from PCNI - Nigeria including, but not limited to, Dr. Joseph Ilonze who, as stated above, was the President of PCNI – Nigeria. *Id.* at pp. 34-35, 85-86. This authority was reaffirmed for the Registrant via a letter written by Dr. Joseph Ilonze on October 25, 2014. *Id.* at pp. 85-87, Exhibit 4. The letter further confirmed that the Registrant is a subsidiary of PCNI – Nigeria. *Id.* at p. 87, Exhibit 4. *See also id.* at p. 88, Exhibit 5. The purpose of the Registrant was to be a subsidiary of PCNI – Nigeria holding all U.S. rights to the service mark at issue. *Id.* at p. 96 (emphasis added). The date of first use claimed in

the service mark application thus flows from the Houston Chapter of PCNI – Nigeria which first used the trademark at issue in the United States. *Id.* at p. 96.

As set forth above, both of the witnesses called for the Petitioners conceded this authority.

Specifically, Dr. Ukeje testified:

Q: So in 2010 – and everyone can agree, I believe, based upon your testimony, that Dr. Mgbako was to file for the Trademark application or was to – was given the authority to register the Trademark, correct?

A: Register the Inc. [Registrant], and file the trademark for all participating affiliates.

...

Q: ... but I think what we can agree ... is that PCNI, Inc. [Registrant], as a subsidiary, ... was given the authority to file for and register the Trademark, and of course, the contingent at issue in Nigeria or otherwise is who really owns PCNI, Inc.?

A: Exactly...

Id. at pp. 48-49. Mr. Ndubizu further conceded that Dr. Mgbako was authorized to form the Registrant and file for the trademark. Ndubizu Depo. at pp. 89-93.

Accordingly, there is simply no dispute that Dr. Mgbako retained (1) the authority to organize the Registrant from the Central Executive Committee and (2) was vested with the authority to file for the club's trademark as a subsidiary of the entire organization whose first use date must necessarily stem back to 1990 when the Houston Branch began use of the mark in question.

In this regard, the Petitioners cannot claim a date of first use that is as early as 1990 as they were not even organized until 1996 or 1997 and 2006, respectively. *See* Ukeje Depo. at p. 9, 10, 14; Ndubizu Depo. at pp. 11-12, 23-24, 79-82.

Accordingly, it is respectfully submitted that as the uncontested testimony establishes the Registrant was formed as an intellectual property holding company for PCNI – Nigeria and the U.S. branches with the rights of those branches inuring to the Registrant. Petitioners have failed to carry their burden to establish that two or three junior branches of the club have superior rights to the Registrant that was vested with the rights, as have been conceded by the testimonial witnesses in this case, for the entire organization.⁴

C. Petitioners Have Failed to Establish that Registrant Committed Fraud Upon the Office

The standard to establish fraud before the Trademark Trial and Appeal Board is set for in *In re Bose Corp.*, 91 U.S.P.Q.2d 1938 (Fed. Cir. 2009). The Bose court reaffirmed that in order to prove fraud on the USPTO, there must be substantial evidence that the applicant or registrant *intended to deceive* the USPTO. *Id.* There is no fraud “if a false misrepresentation is occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive.” *Id.*

The elements of a prima facie case of fraud in a trademark application are:

- (1) applicant/registrant made a false representation to the USPTO;
- (2) the false representation was material to the registrability of the service mark;
- (3) applicant/registrant had knowledge of the falsity of the representation; and
- (4) applicant/registrant made the representation with the intent to deceive the USPTO.

⁴ Reading the pleadings carefully along with the testimony of the witnesses it is clear that the Petitioners are, in reality, using this forum to challenge the ownership and control of the Registrant but not necessarily whether the Registrant is the rightful owner of the service mark at issue. In this regard, it is again suggested that Petitioners have failed to establish their burden of proof and, moreover, they have selected the wrong forum for a battle over ownership and control of an entity while nonetheless continuing to attempt to fit their square peg of a theory into the round hole of Registrant’s trademark ownership.

Id. A party seeking cancellation of a trademark bears a heavy burden of proof. *W.D. Byron & Sons, Inc. v. Stein Bros. Mfg. Co.*, 377 F.2d 1001, 153 USPQ 749, 750 (CCPA 1967).

1. Petitioners Have Failed to Submit Evidence of an Intent to Defraud the USPTO

As a threshold matter, Petitioners have failed to submit any evidence whatsoever of Registrant's alleged intent to defraud the USPTO. As emphasized in *In re Bose*, "[s]ubjective intent to deceive, however difficult it may be to prove, is an indispensable element in the analysis ... such evidence must still be clear and convincing . . ." *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 537 F. 3d 1357, 1366 (Fed. Cir. 2008).

Accordingly, for this reason it is submitted that the Petitioners cannot succeed in their fraud claim as they have failed to submit even a scintilla of evidence which would support an intent to deceive. Rather, all of Dr. Mgbako's testimony, which in large part was corroborated by Petitioners' own witnesses, supports a reasonable and credible belief that he was empowered by the Central Executive Committee to not only form the Registrant in the state of New Jersey but also to prosecute the subject service mark application on the part of the Registrant. To claim otherwise simply has no basis in the instant matter.

2. Registrant is a New Jersey Entity

Next, Petitioners allege that Registrant's claiming to be a Nigerian company is sufficient to permit the cancellation of the trademark. In this regard, Petitioners' argument must fail due to both their failure to show intent to deceive the USPTO as well as the materiality of the issue.

With reference to the intent element, as Dr. Mgbako testified, he was given the authority to organize the Registrant by the Central Executive Committee of the club during the annual

meeting in Houston, Texas in August of 2010. *Id.* at pp. 32-33, 83. *See also id.* at Exhibit P-17. At that time he was also vested with the authority to file for the service mark at issue on behalf of the Registrant. *Id.* at pp. 32-33, 83. *See also id.* at Exhibit P-17. The leadership included delegates from PCNI - Nigeria including, but not limited to, Dr. Joseph Ilonze who, as stated above, was the President of PCNI – Nigeria. *Id.* at pp. 34-35, 85-86. This authority was reaffirmed for the Registrant via a letter written by Dr. Joseph Ilonze on October 25, 2014. *Id.* at pp. 85-87, Exhibit 4. The letter further confirmed that the Registrant was to be a subsidiary of PCNI – Nigeria. *Id.* at p. 87, Exhibit 4. *See also id.* at p. 88, Exhibit 5.

As such, it is easy to understand how a trademark novice such as Dr. Mgbako may confuse a simple question concerning the location of the entity when the Registrant is a subsidiary of the larger Nigerian organization. As such, and in the absence of any evidence whatsoever concerning an intent to deceive regarding this point, it is submitted Petitioner has failed to establish this point of fraud.

Moreover, even assuming, *en arguendo*, the Board disagrees, the state or country of formation for the Registrant should not be considered material to the issuance of the subject service mark registration. At best, it is a minor oversight that can be corrected upon a post-registration amendment. *See Kingsdown Med. Consultants, Ltd. v. Hollister Inc.*, 9 USPQ2d 1384, 1392 (Fed. Cir. 1988).

Accordingly, it is respectfully submitted that Registrant's act or omission in listing itself as a Nigerian company was neither committed with the requisite intent to establish fraud in the instant matter nor was the same material to the issuance of the subject registration.

3. *Registrant Claim of Use of the Service Mark Since 1994*

As set forth in the testimony of Dr. Mgbako, his authority to file for the instant service mark flowed through PCNI – Nigeria. This authority was reaffirmed for the Registrant via a letter written by Dr. Joseph Ilonze. Mgbako Depo. at pp. 85-87, Exhibit 4. The letter further confirmed that the Registrant is a subsidiary of PCNI – Nigeria. *Id.* at p. 87, Exhibit 4. *See also id.* at p. 88, Exhibit 5. The purpose of the Registrant was to be a subsidiary of PCNI – Nigeria holding all U.S. rights to the service mark at issue. *Id.* at p. 96 (*emphasis added*). The date of first use claimed in the service mark application thus flows from the Houston Chapter of PCNI – Nigeria which first used the trademark at issue in the United States. *Id.* at p. 96.

In this regard, there is simply no evidence of an intent to deceive the USPTO with regard to this fact. Rather, Dr. Mgbako gave a well-reasoned explanation as to the reason for the 1994 date supported by other corroborating objective evidence in the case.

4. *Registrant is the Owner of the Service Mark and No Other Person Had the Right to Use the Service Mark in Commerce*

Again, as the testimony has clearly established, Dr. Mgbako was charged with forming the Registrant and filing for the service mark for the entire organization. Mr. Mgbako testified to this effect as did the two witnesses called by the Petitioners. As such, clearly there has been no evidence of an intent to deceive the USPTO with respect to these allegations.

Moreover, Petitioners attempt to claim fraud on the part of Registrant because he knew of the other branches and their use of the service mark at issue prior to filing for the service mark on behalf of the Registrant. Again, however, this allegation must fail. Every witness in this proceeding, including the two called by the Petitioners, agreed that Dr. Mgbako was vested with the authority to form the Registrant and prosecute the trademark application giving rise to the instant service mark registration.

In turn, as has been referenced or repeated multiple times in this filing, Dr. Mgbako's authority and the Registrant's authority as a whole was as a subsidiary entity in the U.S. vested with the authority by the Central Executive Committee to protect the service mark at issue on behalf of the U.S. branches. Given these facts, it would be unreasonable to infer that Dr. Mgbako, acting on behalf of the Registrant, filed the instant application with an intent to deceive the USPTO as to the ownership of the service mark at issue.

Accordingly, as Petitioners have failed to establish their strict burden of proof with respect to the fraud allegations it is respectfully submitted that the claim of fraud in this matter be decided in Registrant's favor.

VI. CONCLUSION

WHEREFORE the Registrant, by counsel, respectfully requests the Board to deny the pleaded relief, deny the Petition to Cancel, and permit U.S. Registration No4,591,874 to remain registered.

Respectfully submitted this 5th day of July, 2016

/Matthew H. Swyers/
The Trademark Company, PLLC
344 Maple Avenue West, PMB 151
Vienna, VA 22180
Tel. (800) 906-8626 x100
mswyers@TheTrademarkCompany.com

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

U.S. Registration No. 4,591,874,
For the mark PEOPLES CLUB OF NIGERIA INTERNATIONAL,
Registered on the Official Registry August 26, 2014.

Peoples Club of Nigeria International Princeton-	:	
Junction, NJ Branch, Inc.; Peoples Club of Nigeria-	:	
International-Miami Branch; and Peoples Club of-	:	
Nigeria International-Chicago Branch,	:	
	:	
Petitioners,	:	Cancellation No. 92059944
	:	
vs.	:	
	:	
Peoples Club of Nigeria International,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 5th day of July, 2016 to be
served, via first class mail, postage prepaid, upon:

CRAIG S HILLARD
STARK & STARK PC
993 LENOX DRIVE, BLDG 2
LAWRENCEVILLE, NJ 08648

/Matthew H. Swyers/
Matthew H. Swyers